

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA

J.M., a minor, by and through)	
her parents and next friends,)	
Thomas and Rebecca Morris,)	
)	
Plaintiff,)	
)	
v.)	Case No. CIV-07-367-JHP
)	
HILLDALE INDEPENDENT SCHOOL)	
DISTRICT NO. I-29 OF MUSKOGEE)	
COUNTY, OKLAHOMA; HILLDALE)	
PUBLIC SCHOOLS BOARD OF)	
EDUCATION; and BRIAN GIACOMO,)	
)	
Defendants.)	

OPINION AND ORDER

This matter comes before the Court on the Combined Special Appearance, Motion to Quash Subpoena filed by Dennis Smith, District Attorney on March 24, 2008 (Docket Entry #40). This Motion is at issue, having had a timely response filed to it. By Order entered March 26, 2008, United States District Judge James H. Payne, the judge presiding over this case, referred the subject Motions to the undersigned for final disposition. Thereafter, the undersigned conducted a hearing on April 15, 2008 to receive argument on the Motions. Counsel for Plaintiff, Defendants Hilldale Independent School District No. I-29 and Hilldale Public Schools Board of Education, Defendant Giacomo, and the movant, Dennis Smith appeared at the hearing. Upon review and consideration of the documents submitted and the arguments of counsel, this Court renders this ruling.

Defendants Hilldale Independent School District No. I-29 and Hilldale Public Schools Board of Education ("Hilldale") seek to compel non-party Dennis Smith, District Attorney ("Smith") to produce documentation related to the prosecution of Defendant Danny Brian Giacomo. Smith objects to the request, claiming the Oklahoma Open Records Act permits the office of district attorney to keep his prosecutorial and investigative files confidential and protect them from discovery.

The Oklahoma Open Records Act (the "Act") expressly states, "the purpose of this act is to ensure and facilitate the public's right of access to a review of government records so they may efficiently and intelligently exercise their inherent political power." Okla. Stat. tit. 51 § 24A.2. The Act also provides for exemptions to providing public access to documents, including certain documents held by a district attorney, by stating

Except as otherwise provided by state or local law, the Attorney General of the State of Oklahoma and agency attorneys authorized by law, the office of the district attorney of any county of the state, and the office of the municipal attorney of any municipality may keep its litigation files and investigatory reports confidential.

Okla. Stat. tit. 51 § 24A.12.

Discovery in this action based on both federal law (Section 1983) and state law (pendant claims) is, of course, governed by the Federal Rules of Civil Procedure. Rule 26(b)(1) provides for discovery "regarding any matter, not privileged, that is relevant

to the claim or defense of any party. . . ." The paramount issue, then, is whether the stated exemptions under Oklahoma state law at § 24A.12 constitute privileges which would potentially restrict production under Fed. R. Civ. P. 26(b)(1). This Court finds they do not.

The Act clearly is intended to pave the way for open and public disclosure of information otherwise secreted by governmental bodies. The exemptions contained in the Act are not privileges, sheltering information from civil litigation disclosure but rather constitute exceptions to the general requirements for disclosure under the Act. As a result, this Court finds Hilldale is entitled to the documentation requested from Smith.

In its response to Smith's Motion, Hilldale offers to receive the documentation requested under the terms of a protective order. Smith's counsel concurred at the hearing that if production was ordered, a protective order might be prudent. In the interests of protecting the District Attorney's investigatory process as best as can be accomplished under the circumstances, production of Smith's files should be made under the umbrella of a protective order.

IT IS THEREFORE ORDERED that Motion to Quash Subpoena filed by Dennis Smith, District Attorney on March 24, 2008 (Docket Entry #40) is hereby **DENIED**. Accordingly, Dennis Smith, District Attorney shall provide the documents requested by the Hilldale Defendants in accordance with the subpoena no later than **APRIL 25**,

2008, or such earlier time as the parties may agree.

IT IS FURTHER ORDERED that the production, maintenance, and dissemination of the documents shall be made under the following conditions:

1. The documentation produced by Dennis Smith, District Attorney to the Hilldale Defendants shall be used solely for the purpose of this litigation and for no other purposes whatsoever.

2. The documentation shall only be made available to, disclosed to, or inspected by the parties to this case; counsel of record in the case or employees assisting counsel in this litigation; to consultants or experts who are employed by a party or a party's counsel to assist in the preparation and trial of this litigation; to court reporters recording testimony at a deposition; the Court; court personnel and other persons mutually agreed upon by counsel for the parties or ordered by this Court.

3. Any person receiving the documentation will also be provided a copy of this Order and shall be bound by its terms.

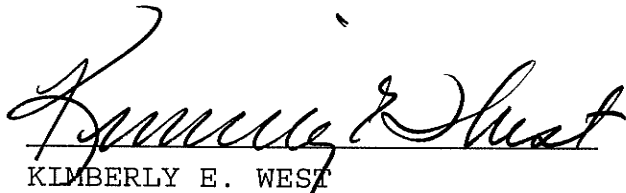
4. Any reference to the documentation in pleadings or documents filed with this Court will be submitted under seal with the notation that it is submitted under seal and confidential.

5. Upon termination of this action by settlement, dismissal, final judgment or mandate following appeal, any person or entity other than the Court who has had possession of the documentation

produced under this Order shall return the materials to Dennis Smith, District Attorney or his designated representative.

6. The provisions of this protective order may be amended or altered upon an appropriate filed request by any party to this action or Mr. Smith, if it is deemed by this Court that such an amendment or alteration is warranted.

IT IS SO ORDERED this 15th day of April, 2008.

A handwritten signature in cursive script, appearing to read "Kimberly E. West", is written over a horizontal line.

KIMBERLY E. WEST

UNITED STATES MAGISTRATE JUDGE